IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 413 OF 2004.

1. Shri Sagun Kashinath Gaonkar,
major, r/o Malim, Betim,
Bardez, Goa.
2. Shri Prabhakar Tukaram Gaonkar
major, ro Morjim at Vithaldas,
Near S.P. School, Morjim,
Bardez, Goa.
3. Shri Madhusudar Budu Gaonkar
major, r/o Near Cumbharjua
Crematorium, Madapai Road Junction,
Post Marcela, Goa.
4. Shri Nilkant Bhagwant Gaonkar,
major, resident of Caisua, Badem,
P.O. Anjuna, Bardez, Goa.
5. Shri Shravan Govind Gaonkar,
major, resident of Chopdem,
Pernem, Goa. .... Petitioners.

Versus

1. The Mamlatdar & Administrator
of Devasthan, Pernem Taluka,
Pernem, Goa.
2. The State of Goa,
Through Chief Secretary,
Secretariat, Panaji, Goa.,
3. Shri Gopal Rama Gaonkar,
major, resident of Chopdem,
Pernem, Goa.
4. Shri Narayan S. Gaonkar,
Chapora, Bandirwada, Bardez, Goa.
5. Shri Ladu P. Gaonkar,
resident of Chopdem, Pernem, Goa.
6. Shri Vishnu N. Gaonkar,
r/o Borvanwaddo, Camurlim, Goa. .... Respondents.

Shri S.D. Lotlikar, Senior Advocate with Shri S.Y. Thaly, Advocate for the Petitioners.

Shri S.R. Rivonkar, Government Advocate for the Respondents No.1 and 2.

Shri R. Casto, Advocate for the Respondent No.4.

Shri S.M. Walwaikar, Advocate for the Respondent No.5.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE: 29th SEPTEMBER, 2004.

ORAL ORDER: (PER MARLAPALLE, J.)

This Writ Petition filed under Article 226 of the Constitution prays for the following directions to the Administrator of Respondent No.1:-

(a) To hold fresh elections to the Managing Committee of the Devasthan for the triennium 2004-2007 in accordance with the procedure prescribed under the Devasthan Regulations and under his supervision.

(b) Restraining the Administrator of Devasthan, Pernem Taluka from committing or doing any act or exercising any power, under Devasthan Regulations or ordering handing over the charge of the existing Managing Committee to any other persons claiming to have formed a Managing Committee on 8.2.2004.

2.The Mamlatdar and Administrator of the Devasthan of Pernem in his affidavit before us has stated that the elections to the new Managing Committee for he triennium 2004-2007 were held on 8.8.2004 and the charge of the Devasthan has been handed over to the newly elected body on 9.9.2004 pursuant to the request made on

4.9.2004. The Attorney of the Managing Committee has handed over eight keys of Shri Devi Bhumika Devasthan to newly elected President and also undertook to hand over books of account and other belongings on 13.9.2004. However, in view of the pendency of Writ Petition in this Court the oath of secrecy could not be administered to the newly elected committee. On the face of this statement, the second relief prayed for cannot be considered and thus the relief which remains to be considered is regarding directions to hold fresh elections to the Managing Committee.

3.Shri Lotlikar, the learned senior counsel for the petitioners, invited our attention to Circular dated 21.1.2004 issued by the Mamlatdar of Pernem Taluka regarding the meeting of the respondent No.1/Devasthan scheduled on 8.2.2004 for electing a new Managing Committee for a period of three years i.e. 2004-2007 and submitted that though the meeting was held on 8.2.2004, on the issue of deletion of 79 Mahajans from the list of voters, there was a commotion and the former President was assaulted as a result of which he closed the main door of the Devasthan hall, displayed a notice and went away. In such a situation the elections scheduled on 8.2.2004 could not be held and if a farce of elections was made, it was illegal in nature and does not meet the test of the Regulations and, therefore, there was an urgent need to issue such directions as prayed for. To support his arguments, he referred to the report submitted by the Talathi of Saza-Agarwada-Chopdem to the

Mamlatdar of Taluka Pernem on 9.2.04.

4.We have noted that the issue of deletion of 79 Mahajans from the voters list is under consideration in Writ Petition No.364/2004 as their appeal came to be dismissed by the Administrative Tribunal and prayer for interim relief has been declined by the learned Single Judge. The Attorney of the newly elected body of 8 members addressed a letter to the Mamlatdar informing him that in the meeting held on 8.2.2004 there was a quarrel on the issue of deletion of the names of 79 Mahajans from the list of voters and Mr. Bhagirath Gaonkar, President had locked the Devasthan premises and gone home, but the remaining Mahajans conducted a meeting of Devasthan and elected members to the Managing Committee unanimously, A copy of the minutes of the meeting was handed over to the Government (Talathi) but the same was refused to accept by him to acknowledge. The Attorney further requested the Mamlatdar to take necessary action for acknowledging the copy of the proceedings and in the said proceedings the names of the newly elected committee members with the respective posts were furnished. Even the report dated 9.2.2004 referred to by Shri Lotlikar and submitted by the Talathi does say that though there was a commotion which resulted in the past President leaving the premises of the Devasthan, the remaining Devasthan Mahajans took a meeting by standing outside the temple and elected unanimously a new managing committee of 8 members. Prima facie it appears that elections were held and

whether these elections were illegal or it did not take place at all is a matter which will have to be gone into by initiating an election appeal as provided under Art.30(7) of the Devasthan Regulations. It was contended by Shri Lotlikar that the period of submitting an appeal has already lapsed and therefore the remedy of filing election petition has become an illusion. It was therefore urged before us to entertain this petition and issue the directions as prayed for.

5.In Writ Petition No.145/2001 decided by the learned Single Judge of this Court on 26.4.2001 a similar issue in respect of the very same respondent No.1 Devasthan came up for consideration and it was observed thus :-

" It is well settled that remedy of questioning the election is a creature of statute and it can be pursued only in the manner provided therefore and in no other manner. No doubt the regulations provide for filing an election dispute, but the authority of the Administrative Tribunal cannot transcend beyond the statute. The scope of jurisdiction of the Administrative Tribunal in such dispute is only to adjudicate whether the election in question is valid or otherwise. ..... So long as the Administrative Tribunal does not render declaration that the election is void till such time the newly elected Body cannot be kept away from the management of the Devasthan. "

6.In Writ Petition No.364/2004 wherein the issue of deletion of 79 Mahajans from the voters list is pending for consideration. By a detailed order, the learned Single Judge turned down the prayer for interim relief which in a way had implied disturbing the elections already held on 8.2.2004.

7.If the Regulations provide for a remedy of appeal to challenge an illegal election or an election which was only a farce allegedly made by the Mahajans or the elections based on illegal list of voters, entertaining a Writ Petition under Art.226 of the Constitution would not be permissible and if such a remedy has not been invoked within the time as provided under the Regulations, it is for the petitioner to blame themselves and that alone would not be a ground to entertain a Writ Petition under Art.226 of the Constitution. The prayer for the directions to the Administrator must therefore fail at the threshold.

8.The petition is rejected summarily.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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